

Approved as Submitted: July 2, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JUNE 18, 2003**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:09 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

OTHER BUSINESS:

1. PLANNING COMMISSION INTERVIEWS/APPOINTMENTS

Council Services and Records Manager Torrez presented the staff report.

The City Council interviewed candidates for the four vacant positions on the Planning Commission, and appointed the following candidates to fill terms ending June 1, 2007: Robert Engles, Robert Escobar, Ralph Lyle, and Joseph Mueller.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 3

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to Closed Session at 6:15 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:12 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced no reportable action taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Rich Gamboa, Independence Day Inc. (IDI), led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented a Proclamation to Director of Human Resources Fisher, designating June 23, 2003, as *United Nations Public Service Day*.

RECOGNITIONS

Mayor Kennedy presented Sarah Flowers with a Certificate of Recognition on her recent promotion to Deputy County Librarian.

CITY COUNCIL REPORT

Council Member Sellers stated that recently the Greenbelt Alliance brought forth their perspective and a General Plan for the development of Coyote Valley. He indicated that a majority of Council members were in attendance at the meeting and felt that this underscores the importance to the City of Morgan Hill of Coyote Valley development. He said that the Coyote Valley will impact Morgan Hill far more than it will impact the City of San Jose. Being discussed is a City approximately 2-3 times the size of Morgan Hill existing to the north which will be a massive development. He said that the population and some industrial development will be impacted and that there will continue to be a significant buffer that will exist between Morgan Hill and the southern edge of San Jose. The Greenbelt Alliance is looking at some interesting ways of providing a buffer such as developing an agricultural industry. He felt that as citizens, everyone needs to be diligent in watching the process move forward. He noted that the City of San Jose has not deemed it worthwhile to have the City of Morgan Hill participate directly.

However, he felt that it was important to let the City of San Jose know that the City of Morgan Hill is very interested in this process as we are very well aware of the impacts to Morgan Hill. He indicated that a lot of activity has been taking place in the downtown in recent weeks. One of the events to take place on June 26 is the Morgan Hill Downtown Association's annual meeting. He indicated that this is a good opportunity for individuals to know what is going on in the downtown. He encouraged the community to participate at this meeting or contact the Downtown Association if individuals want to get involved with the downtown.

COUNCIL SUBCOMMITTEE REPORT

No reports presented.

CITY MANAGER REPORT

City Manager Tewes reported that the Morgan Hill Community Health Foundation was organized to restore medical services in the community. The City Council has provided tax resources to help support this effort. The Foundation has also undertaken significant community fundraising, noting that the Foundation recently reported that a fundraiser netted approximately \$75,000 or more. This will allow them to receive matching funds from the City from the remaining \$70,000 that is available from the initial appropriation.

City Manager Tewes reported on the results of a court hearing held today. He said that over the weekend, some fliers were circulating in parts of the community expressing concern about the possible release into Morgan Hill of an individual designated to be a high risk sexual offender, Brian DeVries. The City Manager indicated that Mr. DeVries has served his time and is due to be released. He has also received care from the Department of Mental Health and they are trying to find a residence in Santa Clara County where he might be released. At the court hearing held today before Judge Baines, it was found that the law in California requires the Department of Mental Health to locate a residence for Mr. DeVries in Santa Clara County only. Judge Baines directed the Department of Mental Health to explore all options for obtaining a residence for Mr. DeVries, including areas outside the County. Judge Baines indicated that he would not approve the release of Mr. DeVries to any California community unless there has first been adequate notice and consultation with local officials, local police and the public. He noted that this has not happened to this point. He indicated that there will be another hearing held on June 27 at 1:30 p.m. in Judge Baines' court to hear a report from the Department of Mental Health. He stated that Mayor Kennedy wrote to the court expressing the City's concern regarding the potential release of Mr. DeVries into the community. He felt that it would be appropriate for the community to follow up and let the governor and others know of concerns, not just of the release of Mr. DeVries, but about the necessity of consulting with local officials in advance rather than afterwards.

Mayor Kennedy stated that he received several phone calls and e-mail messages from members of the Morgan Hill community on the situation relating to Mr. DeVries. He read into the record a

letter he faxed to Judge Baines yesterday so it would arrive before the public hearing scheduled this morning at 9:00 a.m. In this letter, he expressed his deep concerns and those of the residents of Morgan Hill over the potential release of Brian DeVries into the community. He indicated that the City will continue to place pressure on the State and the judge to ensure that Mr. DeVries is not located in Morgan Hill.

Council Member Sellers indicated that the City will continue to fight hard to make sure that the release does not take place in Morgan Hill. He appreciated the efforts of the Mayor, Council Member Carr and the staff who worked hard to make sure that the community's concerns were presented today.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the Department of Mental Health tries to find locations to release high risk offenders where they can be supervised and receive continued counseling, and meet conditions of release. The Department of Mental Health takes potential sites to the judge for approval. The judge looks at all factors, weighs them and determines the appropriate place of release. During the process, the judge will take public comment, consult with local officials, and consider input. However, this does not occur until such time as the Department of Mental Health has recommended sites. She said that staff and the Council will try to actively monitor to ensure that one of the considered sites is not in Morgan Hill. She said that the hearing on June 27 is not a public hearing and that it may be that the judge may not take public testimony at that time as they may not have found a site for Mr. DeVries to be located. She indicated that citizens can contact her office or other city offices if they would like to receive further clarification about the process. She distributed the Monthly Litigation Summary, noting that there were no changes this month.

OTHER REPORTS

Mayor Kennedy announced the upcoming reenactment the Sister City Signing Ceremony to take place on June 25 at 4:00 p.m. with San Casciano, Italy at the Community and Cultural Center, El Toro Room. He indicated that San Casciano's Mayor Roselli, family members and several other delegation members will be in attendance at the signing ceremony and that they will be a part of the Fourth of July festivities.

PUBLIC COMMENT

Cindy Gobin inquired as to the status of a test garden to test for the presence of perchlorate in vegetables and fruits with Morgan Hill water.

Mayor Kennedy stated that he attended a meeting held last week by the Citizens Advisory Committee on Perchlorate in San Martin, as well as holding discussions with the City Manager and City Attorney. He indicated that Ms. Gobin has been contacted and invited to attend the

Perchlorate Medical Advisory Group that is meeting in San Martin. He felt that the results require a very specific analysis that the City is not equipped to handle. Therefore, it would not be appropriate for Morgan Hill to conduct the test garden. He felt that the City needs to keep pressure on those responsible for testing, including the County Agricultural Commissioner and other state wide organizations to conduct this kind of test work.

Ms. Gobin clarified that it was never her intention that the City of Morgan Hill should pay or actually perform the testing. She wanted the City to pressure the responsible parties to do the testing of produce grown with Morgan Hill city water.

Mayor Kennedy indicated that he would continue to keep the pressure on the Santa Clara County Agricultural Commissioner to get this done and encouraged Ms. Gobin to do the same on the Medical Advisory Group and the San Martin Perchlorate group.

Fran Odems inquired whether the vendors who place their stands at various intersections in Morgan Hill have permits to sell produce and fruits. She noted that individuals come from out of the area from places such as Lodi, Stockton, Modesto, and Salinas to sell their crops and fruits. She inquired what happens to local growers when outsiders come into the community.

City Manager Tewes indicated that the locations identified by Ms. Oden (Tennant/Hill) are located in the unincorporated section of the County and are not under the jurisdiction of the City. He stated that local farmers are allowed to sell produce at their location. He was not aware of any licensed or permitted fruit stands in the City limits.

Director of Community Development Bischoff said that the City does not allow the sale of agricultural products unless it is on the property in which the produce is grown. If there are any fruit stands in the City, they are not licensed as the City prohibits them.

Ms. Odems said that she was told that the reason outside vendors come to Morgan Hill is attributed to the fact that local growers do not wash or clean their produce. They come to Morgan Hill because their fruits are washed, cleaned and packaged nicely.

Mayor Kennedy requested that staff contact the County and advise them of the concerns raised this evening.

City Manager Tewes announced that the City has a certified Farmer's Market that is organized on Saturdays in the downtown. Some individuals come from other areas outside Santa Clara County. As this is a certified Farmer's Market, the produce is cleaned, washed and healthful for individuals who purchase the produce.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that items 3, 4 and 5, Council Member Sellers requested that item 6, and Council Member Tate requested that item 11 be removed from the Consent Calendar.

City Attorney Leichter clarified that there was a substitute contract which had some clarifications to item 4, paragraph 3 and that it was not necessary to pull it from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2, 4, and 7-9, as follows:*

2. **MAY 2003 FINANCE & INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

4. **APPROVAL OF PURCHASE AGREEMENT WITH MORGAN HILL UNIFIED SCHOOL DISTRICT (MHUSD) FOR BURNETT AVENUE WELL SITE**

Action: **Approved** Purchase Agreement with Morgan Hill Unified School District Conveying Burnett Avenue Well Site, as amended.

7. **COMCAST SEWER/TRAFFIC FEE FINANCING**

Action: 1) **Approved** a Sewer/Traffic Fee Financing Agreement of \$235,020 for up to Two Years to Comcast Cable Communications, Inc. for 18665 Madrone Parkway; and 2) **Authorized** the City Manager to do Everything Necessary to Execute the Sewer/Traffic Fee Financing Agreement.

8. **APPROVAL OF CONTRACT FOR INTERIM MAINTENANCE SUPERVISOR**

Action: **Approved** the Agreement and **Authorized** the City Manager to Execute a Contract to Continue the Contract Services of an Interim Maintenance Supervisor, Subject to City Attorney Approval.

9. **AWARD BID FOR SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) TELEMETRY REPLACEMENT PROJECT**

Action: 1) **Authorized** the Transfer of \$278,140 (const) From Project #607A98 (Jackson Oaks Booster Station) to Project #606093 (Replacement SCADA); 2) **Awarded** Contract in the Amount of \$1,254,845 to Tesco Controls, Inc. for the SCADA Replacement Project; 3) **Authorized** the Issuance of CCO#1 for the SCADA Project to Deduct Work Items Totalling Approximately \$330,555; 4) **Authorized** \$135,000 (15%) Construction Contingency for the Project; and 5) **Approved** Professional Services Contract in the Amount of \$101,942 for Telemetry Construction Support Services with Carollo Engineers.

3. **AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. TO CO-SPONSOR THE JULY FOURTH CELEBRATIONS**

Rich Gamboa, Vice President of IDI, introduced other IDI Committee Members in attendance this evening: Bruce Tichinin, president; Bob and Maureen Hunt, parade chairs; Jeff Roth, Fundraising chair; Karen Crane, Patriotic Sing; Charles Weston, 5-K race; and Brad Jones. He provided the Council with an overview of events which include the following activities: golf tournament, patriotic sing, street dance, 5-K race, parade, family festival and the fireworks display. He acknowledged the support from the City Council, staff and the public that help sponsor the Fourth of July event. He thanked the Council for its support and for considering the request for services and funding for this year's festivities. He indicated that IDI recently received the final quote on the liquor liability insurance that went up to \$2,500. This increase pushed IDI's amended request to \$24,400. The cash amount that is needed in advance for the increase in insurance premiums is acceptable and budgetable. It was his hope that the possible increase in total service fees will help defray any possible increase from the City in terms of services when they are billed to IDI. He said that the growth in IDI budget has come from the growth of the City and the increase in insurance experienced after September 11 in terms of all of the liability policies that must be paid prior to putting on this event. He said that IDI, as a committee, is as strong as ever and that it is expected that this event will be as great as ever.

City Manager Tewes stated that the funding source comes from the Community Promotions budget and that the amount of funds being recommended for this total function reflects the amount spent last year in light of the reductions being taken elsewhere in the City's budget. Should the Council appropriate \$25,000, it would leave \$5,000 for all the other community promotions in Fiscal Year 2003-04.

Council Member Tate did not believe that the remaining \$5,000 would be much, noting that part of this budget is the YES budget and that he was protective of the YES budget. He indicated that the funding under YES will help sponsor a Battle of the Bands on Friday. He said that the Council has its budget to consider as well.

Council Member Sellers said that with the exception of YES and IDI, the Council has been reluctant to participate in a lot of activities using these funds. He felt that as long as there is \$5,000 in the Community Promotion's budget to match what was done with YES last year, that he was comfortable with his recommendation of a contribution funding and in-kind services not to exceed \$25,000.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Authorized** the City Manager to Sign the Agreement to Co-sponsor the July Fourth Celebrations and Support Independence Day Inc. by Contributing Funding and In-kind Services, Not to Exceed \$25,000.*

5. SHARKS IN THE PARK SPONSORSHIP FOR YOUTH ADVISORY COMMITTEE ACTIVITY

Brittany Bach, Secretary of the Youth Advisory Committee, and Jonathan O'Mahan, Youth Advisory Committee Member, brought the Council up to date on the information they have about a new program called Shark's in the Park Program. Mr. O'Mahan indicated that this is a program put on by the San Jose Sharks, NHL and Nike. He indicated that cities apply for the program and that Nike and the NHL bring street hockey equipment to designated locations. They put on games and possible tournaments. This program would provide after school activities for youth between the ages of 13-16. He indicated that a coach is in place and that the Youth Advisory Committee believes that this is a great program. He said that the Youth Advisory Committee is looking at establishing a coed team. He submitted a letter that contained signatures of individuals who believe that this would be a good program for the City. It is his hope that the program will be put on by the Recreation and Community Services Division as well as the Youth Advisory Committee.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) **Approved** Council Co-Sponsorship of Youth Advisory Committee's Request to Submit a Grant to the Sharks in the Park Youth Street Hockey Program; and 2) **Authorized** the City Manager to Add the Sharks Organization Street Hockey Program as Additionally Insured through the City's Insurance.*

6. SUMMER THEATER ARTS REPERTORY (S.T.A.R). SUMMER PROGRAM CONTRACT

Council Member Sellers indicated that his wife is a long time teacher of this program and that his son has been participating in the program for the past few years. Therefore, he would be abstaining from this item.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0-1 with Council Member Sellers abstaining, **Authorized** the City Manager to Execute a Contract in the Amount not to exceed \$25,000 for the Children's Drama Camp Entitled STAR (Summer Theater Art Repertory) Camp.*

City Council Action

CONSENT CALENDAR: (Continued)

10. SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT – Resolution Nos. 5674-5682

Mayor Kennedy indicated that he would recuse himself from acting on the resolutions relating to the Conte Garden zone and Mayor Pro Tempore Chang indicated that she would recuse herself

from acting on the resolutions relating to the Sandalwood Estates zone as they reside within 500 feet from each of these areas.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution Numbers 5674, 5675, and 5676, Excluding the Conte Gardens and Sandalwood Estate Zones.*

Mayor Kennedy excused himself from the Council Chambers

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0, with Mayor Kennedy absent, **Adopted** Resolution Numbers 5677, 5678, and 5679, Referring Only to the Conte Gardens Zone.*

Mayor Kennedy resumed his seat on the dias.

Mayor Pro Tempore Chang excused herself from the Council Chambers.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution Numbers 5680, 5681, and 5682, Referring Only to the Sandalwood Estates Zone.*

Mayor Pro Tempore Chang resumed her seat on the dias.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** the City Clerk to Notice a Copy of the Resolutions.*

11. **SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 4, 2003**

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Tate abstaining, **Approved** the Minutes as written.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

12. **SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 4, 2003**

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0-1 vote with Council Member Tate abstaining, **Approved** the Minutes as written.*

City Council Action

PUBLIC HEARINGS:

13. ANNEXATION APPLICATION, ANX-03-01: HILL-GERA

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Chang, the City Council unanimously (5-0) **Tabled** Application ANX-03-01: Hill-Gera.*

14. EXTENSION OF TIME, EOT-03-06: McLAUGHLIN-JONES – Resolution No. 5673

Mayor Pro Tempore Chang indicated that her business office is located within 500 feet of this property. Therefore, she would recuse herself from this item. She excused herself from the Council Chambers.

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5673.*

Mayor Pro Tempore resumed her seat on the dais.

15. DEVELOPMENT AGREEMENT AMENDMENT, DAA-00-08: BERKSHIRE-SINGH – Ordinance No. 1622, New Series

Director of Community Development Bischoff presented the staff report.

Council Member Tate indicated that agenda items 14 and 15 are requests for six month extensions, and that there are two more requests to consider that are also requesting six month extension. He said that it was his understanding that the Planning Commission placed a condition on this application that states that it is their hope that this is the last request for an extension. He

assumed that any time the City gives less than a year extension; the Council is implying that it is the last extension, otherwise, why would the Council not give them a full year extension. He felt that the City needs to discourage applicants from returning if only a six month extension is granted.

Council Member Carr felt that it should be generally known that the Council only grants one extension.

Council Member Tate felt that you need to understand the history of this application to understand that sometimes four extensions of time are necessary.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1622, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1622, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1568, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE-SINGH TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APN 764-23-054; DAA-00-08: BERKSHIRE - SINGH) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

16. DEVELOPMENT AGREEMENT AMENDMENT DAA-01-07: COCHRANE-MISSION RANCH – Ordinance No. 1623, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing.

Dick Oliver advised the Council that this request was filed in April when it looked like the Public Works Department would not be able to process the final map in time, the Building Department would not have the time to process the building permit, and that he would not have the time to secure insurance for the project. He stated that due to the great work of city staff, the map recorded on May 6 and he pulled all permits on May 8. He was able to commence construction before June 30 on 16 homes. Therefore, the six month extension is no longer necessary.

City Attorney Leichter indicated that Mr. Oliver did not technically withdraw his application.

No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1623, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1623, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1535, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-21: MISSION VIEW-DIVIDEND HOMES TO INCORPORATE A SIX-MONTH EXCEPTION TO LOSS OF BUILDING ALLOTMENT (APNs 728-32-001, 002, 003 & 728-33-001; DAA-01-07: Cochrane-Mission View) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

17. DEVELOPMENT AGREEMENT AMENDMENT DAA 02-01: CHURCH-SOUTH COUNTY HOUSING – Ordinance 1625, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1625, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1625, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1564, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-31: CHURCH – SOUTH COUNTY HOUSING TO ALLOW FOR A SIX MONTH EXTENSION OF TIME FOR 36 BUILDING ALLOTMENTS RECEIVED IN THE 2001 RDCS COMPETITION. (APN 817-02-002, 003, 004, 005, 022, 023 & 038) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Mayor Kennedy indicated that it would be his recommendation to consider agenda item 24 at this time followed by agenda item 18.

OTHER BUSINESS:

24. CONSIDER REVISION TO AUTO DEALERSHIP STRATEGY

City Manager Tewes presented the staff report and stated that in 2002, the Council adopted a strategy to try to encourage the attraction of auto dealers. At the Mayor's request, this item has been placed on the agenda for consideration of the strategy.

Mayor Kennedy indicated that Council Member Tate reviewed the video tape of the public hearing portion of the June 4 Council meeting. He indicated that last week, a LAFCO meeting was held in which the City of Morgan Hill requested the inclusion of 19.5 acres into the Urban Service Area. The 19.5 acres are general planned and designated as campus industrial. A presentation was made to the State LAFCO Commission of Santa Clara County. He stated that he made comments at the presentation that he would recommend to the Council that it delete the wording in the auto dealership strategy that talks about requesting that this parcel be annexed specifically for auto dealership purposes. He stated that there are two places that this appears in the auto dealership policy. The first can be found on the bottom of page 350 of the agenda packet. He recommended that the statement regarding annexation be deleted as well as area B of the map be deleted from the auto dealership strategy. This would be consistent with the comments he made to the LAFCO Commission.

Mayor Kennedy opened the floor to public comment.

Bruce Tichinin, representing Scott Lynch, owner of Bob Lynch Ford, stated that it seems that the proposal before the Council is stating to the residents of the area that it vows to fight the disease of an auto mall. However, should the Council approve the Ford project it would not fight the infection. Mr. Stump, the City's expert, confirmed that auto dealers look for proximity to other dealerships. He referred to page 101 of the auto dealers' sites and strategy and page 109 that prioritizes and ranks three key areas best suited for auto dealers at the Dunne Avenue area that is now being proposed for deletion. The Council indicates that the Dunne Avenue area is the premier site for automotive retail. Once an auto dealer commits to a site, the City would focus on attracting others to the area. He said that the deletion of the Mushroom farm as a potential site will eliminate the potential of doing this. He inquired whether it would be worth the impact to the quality of life that this one store will have to keep that portion of the strategy solely to gain the now rather paltry amount of sales tax revenue that this one dealership will produce for the City. He felt that this was not a well thought out strategy in what appears to be a desperate attempt to save this one application. He did not believe that this was a good policy. He recommended that the Council rescind its auto dealership strategy, and disapprove the Ford dealership. He felt that preserving long term quality of life is more important than ruining it with this one application for

an amount of sales tax revenue that would be nowhere near what the implementation of the whole strategy that the Council is now willing to retrench on.

Matt Lawson stated that he was in attendance at the LAFCO meeting. He said that one of the issues raised was that this area can be rezoned in just two years. It was his hope that one of the ploys was not to zone the property for campus industrial only to wait for someone else to come in and change the zoning to allow auto dealerships in the future. It was his hope that this was a sincere effort by the Council to uphold what was promised at the LAFCO meeting.

No further comments were offered.

Council Member Tate said that it was not his recollection that the Council put together an auto dealership strategy of 10 auto dealerships as stated in the Morgan Hill Times. The Morgan Hill Times also reported that Mayor Kennedy had gone in front of LAFCO. He said that the City would like to annex the mushroom farm as it would be beneficial to do so whether or not it is used for an auto dealership. He said that the Council was not talking about auto malls but talking about individual dealers. Mayor Kennedy informed LAFCO that he would try to convince the City Council to go along with his commitment not to place auto dealerships on this property. He stated that he would honor this commitment as this is a commitment that the Council had to make to annex the property. However, when you see what this does to the Council's strategy in terms of taking the annexation out and taking Area B out of the map, he did agree with Mr. Tichinin's conclusions. He recommended that the Council reexamine the auto dealership strategy with a new awareness and think about the whole strategy to make sure that the City has a strategy that will hold together. He indicated that the Council wanted a total of 3-4 dealerships in town and that they be grouped in proximity to each other. The Council felt that it had the best location in terms of auto dealership's preference on Dunne Avenue. The Council felt that it could do some grouping in this location and now it can't. He said that he would like to honor the commitment made by the Mayor to LAFCO as he understood the reason why it was made and that it should not be changed.

Mayor Kennedy stated that he has favored the Cochrane Road area for auto dealerships and that he also supported the auto dealership strategy. He felt that Mr. Tichinin raised some valid points and that it would be fairly easy to clean up the language to make the auto dealership strategy acceptable. He felt that the Council's actions were to support 3-4 auto dealerships in Morgan Hill. It was his personal belief that with the existing Chevrolet dealership and the Ford location at Condit and Dunne, this would leave plenty of opportunity for getting another 2-3 auto dealerships in other locations, not necessarily on Condit but perhaps on Dunne Avenue, adjacent to the Chevrolet dealership or at a site south of K-Mart. These areas would still be consistent with the first prioritization site. He felt that the statement that addresses concentration of attracting auto dealerships on Dunne Avenue should be stricken to leave the strategy open ended. It was his belief that the rest of the language contained in the auto dealership would still work.

Council Member Tate stated that he would like to rethink through the entire strategy rather than tweaking it to make it work. He said that he has heard that auto dealers like proximity to each other. He said that it would be more appealing to have auto dealerships group rather than having them sited on four corners. He felt that the Council needs to walk through the entire auto dealership strategy again as he did not believe that it could just be tweaked.

Mayor Pro Tempore Chang concurred with the comments expressed by Council Member Tate. She stated her objection to the Dunne Avenue area for an auto dealership. She supported the use of the Tennant and Cochrane areas for 4-5 auto dealerships, if well planned. She recommended that the entire Dunne Avenue area be removed from the auto dealership strategy, inserting the Cochrane and Tennant area as the location to site auto dealership(s). She further recommended the deletion of Dunne Avenue as the number one ranking under area/site prioritization, deletion of reference to the Dunne area sites contained in paragraphs 1 and 2 under marketing, and the deletion of the annexation section.

Council Member Tate said that he would not support the elimination of the Dunne Avenue area as he would like to study alternatives and determine the importance of having auto dealerships in proximity.

Mayor Kennedy offered a compromise between the two positions. He supported deletion of the annexation paragraph with the understanding that the Council would revisit the remainder of the auto dealership strategy for a subsequent Council action.

Council Member Tate supported Mayor Kennedy's recommendation to revisit the auto dealership strategy in a workshop environment.

Mayor Pro Tempore Chang said that should the Council approve the Ford application this evening, there would only be one site left to locate an auto dealership. She noted that the marketing strategy is to target auto corporations to the Dunne Avenue site. She inquired whether this would mean that auto dealerships would be located somewhere else on Dunne Avenue.

Mayor Kennedy recommended adding the additional parcel adjacent to the K-mart site as a possible auto dealership site, but not this evening.

Council Member Sellers said that it would be easy to make the following modifications: Marketing – 1) eliminate the phrase "the Dunne Avenue sites" (paragraph 1); 2) amend paragraph 3 to read: "Once an auto dealer commits to a site, focus on attracting others to the area." He did not know if the integrity of the strategy would be diminished if the Council does not specifically focus on Dunne Avenue. He said that reference was made to Los Gatos and stated that they have a lot more auto dealerships then he would ever approve. He noted that Los Gatos has strewn auto dealerships through a residential area which is something different from what the Council is talking about. He noted that the Council would be including a buffer from the residential area. He noted that the Stevens Creek area also has auto dealerships strewn over a two mile radius. He

noted that Bob Lynch Ford in Gilroy is located separate from a lot of the other dealers. He stated that every member on the Council is only interested in a few auto dealership sites in the community. He concurred with Council Member Tate that it would be wise for the Council to revisit the entire strategy with the consultant, staff and the community to make sure that the strategy remains sound. He recommended that the Council make clear to the community that it has no intent of allowing auto dealerships on the annexed land.

Mayor Pro Tempore Chang understood that the Council would be revisiting the auto dealership strategy but that she was having a hard time stating that Dunne Avenue is a prime area for automotive retail.

Council Member Carr noted that the Mayor Kennedy made suggestions to LAFCO and indicated that he would like to honor these suggestions. He felt that the Mayor and other Council members have offered suggestions this evening that would allow the Council to move off this issue and to get to the real issue before the Council with the understanding that the Council would come back and relook at the strategy. The Council would be taking the question of the 19-acres off the table. He supported elimination of the paragraph relating to annexation as it was a good suggestion.

Mayor Kennedy stated that the minutes would reflect that the Council intends to review the auto dealership strategy and that it may turn out that the Council will ultimately revise the wording. He recommended that this item be continued to July 2, 2003.

Council Member Carr noted that Council Member Tate recommended a workshop format. He inquired whether the Council wanted to commit to an earlier start time to accommodate a workshop.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) **Approved** the Mayor's Request to Revise the Auto Dealership Strategy to delete the annexation paragraph from the current strategy; and 2) **Directed** staff to schedule a workshop session on July 2, 2003 to revisit the strategy with some potential for updates and changes.*

PUBLIC HEARING

18 ZONING AMENDMENT APPLICATION, ZAA-98-16: CONDIT-HORIZON LAND (THE FORD STORE) (Continued from June 4, 2003) – Ordinance No. 1621, New Series

Mayor Kennedy opened the public hearing to give a parent with a small child the opportunity to address the Council at this time.

Sandy Fairband stated that she lives in the neighborhood several blocks north and away from the proposed Ford dealership and auto mall sites. She felt that her family's life will be directly

impacted if the Council approves the auto mall this evening. No matter what promise the Council has made to the City Manager, the Council cannot guarantee that other auto dealerships would not follow as dealerships like to group together. She felt that allowing the auto mall to materialize at this location would jeopardize the safety of her family when they walk to Nordstrom Park. She expressed concern that the Council was not listening to the residents. She noted that many residents are voicing that this location, on Dunne Avenue, is not right for an auto dealership as this is a small and family oriented community. She said that it is the Council's job to hear and protect the citizens of the community. She noted that the Ford dealership is not the only auto dealership out there and that there may be others interested in negotiating a location with the City if they want to locate to Morgan Hill bad enough. She did not believe that the Council could control where test drives are taking place and expressed concern for the safety of the residents.

Planning Manager Rowe presented a power point presentation to address the public comment and to clarify some confusion of the location of the proposed auto dealership. He indicated that he included a response to Attorney Bruce Tichinin's comments as attachment B to the staff report. He indicated that a traffic trip generation comparison was prepared by Fehr and Peers Association for the proposed use. He addressed the site location/zoning and surrounding land uses. He indicated that the traffic consultant addressed some of the concerns raised relating to pedestrian safety and looked at some of the trip generations. He indicated that the proposed auto dealership would have the fewest number of trips to be generated and would have the least amount of impact to the street system. He said that the majority of the trips to and from the dealership would be accessed from Highway 101 (70%) from points north; and south from Dunne Avenue, west of Highway 101. He said that the dealership is required to identify prescribed test drive routes per insurance requirements. As a condition of approval, staff is recommending that that test drives be limited to Condit Road, Highway 101 and segments of East Dunne Avenue, Cochrane Road and Tennant Avenue that would require access to and from the freeway. Test driving of vehicles would be prohibited on Murphy and East Dunne Avenues, east of Condit Road and would require the accompanying of a sales person. With respect to enforceability, he said that the approval could be conditioned to prohibit test drives on Murphy and East Dunne Avenues as a requirement of the PUD. If there is a violation of these conditions, they would be subject to an enforcement action that could proceed to an enforcement hearing if there is not a remedy to the violation. This could eventually proceed to an action which would result in the dealership no longer being permitted to operate and the occupancy permit revoked. He said that the applicant needs to respond and state their commitment to adhere to the restriction of limiting test drives to prescribed routes.

Planning Manager Rowe addressed the concerns relating to noise and lighting. He said that the City's municipal code has commercial and industrial performance standards. The code has set 60 decibels as the maximum sound to be generated at the lot line adjacent to residential uses. He noted that there was an intervening residential area planned. Therefore, the sound generated from the use cannot exceed the 60 decibel threshold. He noted that there is a condition in the zoning approval that would require that there not be an exterior public address system or other noise intrusive communication system. This would be a code requirement and would be subject to code

enforcement action if violated. Regarding light and glare impacts, he said that there is a code requirement that requires all lighting in the PUD to be shielded and directed in such a manner as not to directly cast light from the boundaries of the site onto adjacent properties. He said that another condition in the PUD stipulates that the City would conduct a photometric study to verify compliance with code requirements. He noted that the subject property was annexed into the City over 30 years ago and that it is zoned commercial. Therefore, the automotive dealership is a permitted highway commercial use at this location.

Planning Manager Rowe summarized his comments as follows: the number of vehicle trips generated by the use would be fewer than any other use, including the uses that are presently approved to be developed on the site. Test driving of automobiles would be prohibited on Murphy and Dunne Avenues and would be limited to the prescribe routes. The City would be approving the prescribed routes. All impacts associated with the proposed use would be reduced to a less than significant level because of the mitigation measures or code requirements. Therefore, based on the fact that all environmental impacts would be reduced to a less than significant level, the project approval would not require the preparation of an Environmental Impact Report.

Council Member Tate noted that Council Member Sellers talked about Los Gatos as a community that has a number of automobile dealerships that are approximate to residents. He inquired whether staff checked with Los Gatos on any of their safety records in terms of accidents. He inquired whether Los Gatos has prescribed test drive routes.

Planning Manager Rowe said that during the interval time staff had to prepare for this evening's meeting, staff was only able to look at the City's local experience. Staff found that the local Chevrolet dealership was the same as this use as far as the prescribed routes. He stated that test drives would be limited to Condit Road, Highway 101, segments of East Dunne, Cochrane and Tennant which are necessary to access the site to and from the freeway. He said that staff reviewed the auto dealership strategy. The strategy looked at six geographical areas that were potential locations for dealerships. Staff did not see, within the strategy, a commitment to approve a dealership in any specific location. He said that the 19+ acres to the north of this site as well as the parcel to the south of the former K-mart store have general plan designations that would not permit auto dealership uses. Therefore, staff concluded that it would be speculative that the approval of one dealership at this location would trigger the approval of more than one dealership at other locations such that it would warrant the need to look at producing a cumulative impact sense under an EIR. Should a dealership apply to locate south of the K-mart store, the impacts would be evaluated as part of the application to amend the general plan and zoning on that site.

Mayor Pro Tempore Chang inquired why this site and the adjacent 19+ acre site would not be considered a cumulative affect.

Planning Manager Rowe noted that the area to the north is general planned office industrial. He stated that LAFCO approved the City's expansion of the urban service area last Wednesday only on the basis that this land would develop under the office industrial designation and not for other

uses. He noted that the existing PUD has enough land area to support one dealership. He said that in order to study the cumulative affect of this site and the proposed annexation of the 19+ acres to the north would require a change in the land designation. He said that development, as proposed, would be consistent with the adopted PUD plan. Staff did not see this as being reasonably foreseeable and is considered undue speculation.

Mayor Pro Tempore Chang said that at the time the Christian College came before the Council, Christian College representatives talked about an expansion. At that time, the City requested that they perform a full environmental impact report (EIR) based on future promises. She requested an explanation as to the differences between this case and the Christian College case.

Planning Manager Rowe said that the Christian College site was one parcel of approximately 30 acres which they proposed to acquire for a specific purpose. The Christian College included detailed information in the initial application and in newsletters/other documents that they described as their vision for future uses. He noted that they were very precise as far as the planned build out of the entire single site. In this case, the City is talking about different properties that are not under the control of this applicant. Therefore, staff did not see the same correlation between the two because the City is dealing with distinctly different properties.

City Attorney Leichter said that one of the critical differences between this situation and the Christian College situation is not only that the one parcel was under the control of one applicant that had precise plans as stated, but the Council is talking about a governmental action in this case in terms of an auto dealership strategy and economic development. She stated that this is very different in terms of the CEQA analysis of what is reasonably foreseeable in an applicant's plans for one parcel which it controls. This is the reason why staff does not believe that this is reasonably foreseeable and therefore an EIR is not required.

Council Member Sellers noted that the Council technically closed the public hearing last week. He requested clarification whether the Council needs to formally reopen the public hearing in order to receive public testimony. He noted that there were several individuals who want to hear the proceedings. He inquired whether the Mayor would be making recommendations about the procedures this evening, noting that the Council has heard a lot of testimony at prior Council meetings and through e-mails and conversations via telephone calls.

Mayor Kennedy proposed that the Council reopen the public hearing, hear from the applicant, Mr. Tichinin and the other speakers who submitted cards. The Council would then close the public hearing and then enter into Council discussion/action.

Mayor Kennedy opened the public hearing.

Vince Burgos, Development Process Consultant, said that project proponents would like to address some of the issues. He indicated that Ford has assembled representatives to speak on behalf of the applicant. He noted that four individuals were in attendance to address the Council:

Sean Absure, representing the Ford Store; Ted Mengiste, representing the Ford Motor Company; Craig Ahlstrom, partner/owner of this particular of this particular dealership; and John Telfer, representing Horizon Land, the current owner that is selling the property to the applicant.

Sean Absher, partner share holder at Stradling, Yocca, Carlson, and Rauth, stated that he sees his purpose this evening as weighing in on the legal issues raised by Mr. Lynch, owner of Bob Lynch Ford, through his attorney Bruce Tichinin. He addressed the letter sent by Mr. Tichinin to the Council dated June 4. He stated that he was also handed a letter this evening by Mr. Tichinin dated June 18. He stated that Mr. Lynch is a resident of Gilroy with an operation of a Ford dealership in Gilroy. He said that the case he cited in the letter establishes clearly that Mr. Lynch does not have the standing to make the legal arguments that are being made this evening. He felt that Mr. Lynch can only have a standing under one of two theories: 1) that Mr. Lynch has a beneficial interest. He said that in order to have a beneficial interest, Mr. Lynch and his business needs to be directly impacted by the zoning amendment application before the Council. 2) Mr. Lynch does not fall under the regular standing that any citizen has to further a public interest. In order for a person to make an argument who is not beneficially interested, the individual would have to demonstrate that they have had and continue to have a significant interest in furthering environmental interests. This would typically be done by public interest groups that act consistently throughout counties, state and public government, furthering environmental causes. He noted that Mr. Lynch is not an individual who has demonstrated in the past an interest of furthering environmental concerns. He could understand why Mr. Lynch is interested in these proceedings, but that he did not have the standing to make legal arguments. He did not believe that the arguments were well made, but that Mr. Tichinin's letter presented to him this evening requests that the Council continue the hearing for two weeks. He requested that the Council not grant the requested continuance, as it was his belief that staff had done a thorough and complete job in its presentation.

Mr. Absher addressed the substantive legal issues raised by Mr. Lynch. He said that Mr. Lynch, through his attorney, states that the Council and staff have not made findings significant to identify substantial property rights as referred to in the June 4 letter, page 6, item 2. He said that the fundamental problem with the argument is that Mr. Lynch relies on the Topanga case. He stated that the Topanga case dealt with a use variance. The applicant wanted a variance to change the use of a property. Under California law, you can no longer use a variance to change the use of a property. He said that the Topanga case has nothing to do with what is before the Council this evening. With respect to the argument made under heading 2 relating to the substantial property rights, he stated that this talks about a legal concept that does not apply in this case, a use variance. He indicated that a use variance is no longer allowed. What is before the Council is an amendment to a zoning ordinance that essentially rezones the property, and is not considered a use variance. He read the Orinda Homes Committee Case into the record that he considered as being precisely the same setting before the Council. The case dealt with homeowners seeking to invalidate a rezoning ordinance that dealt with a planned unit development. This was a situation where a developer wanted to go in and change the zoning classification within a PUD, similar to what is before the Council. The concept of changing the PUD to allow for a different type of use

or different characteristics/features is a zoning application and not a variance. The Court stipulated that in acting on the zoning ordinance, the Board of Supervisors performed a legislative function. The Council has a situation where it is considering an amendment to the zoning ordinance that effectively rezones the property. This is why the proceeding before the Council is an ordinance and not a variance request. This being the case, the application of the variance standards does not apply in this case. He referred to Mr. Tichinin's letter, heading 3 that states that failure to grant the exceptions would prevent the dealership from being profitable, citing the Topanga Case. He noted that this case dealt with a use variance and that is not what is before the Council this evening. What is before the Council is an amendment to a zoning ordinance that is being accomplished through a rezoning, a legislative action. The Council's action would be under a different set of rules and not evaluated under 1094.5 of the Code of Civil procedures as referred to by Mr. Tichinin. He stated that this Code section applies to administrative acts and does not apply to legislative actions on the part of the Council. From a land use, legal perspective, he did not believe that Mr. Lynch has a standing to make the arguments. He felt that the Council had ample findings and ample facts to support granting the application.

Ted Mengiste indicated that he is the market representative for Ford Motor Company of Northern California. He stated that for the past 8 years, Ford has monitored the Morgan Hill market and identified a place where it would like to do business. Once this determination is made, Ford looks for a dealer candidate that would represent them well in Morgan Hill or any given community. He said that a Ford dealer operator has to fit the four Cs: Credit, character, capacity, and customer satisfaction. He said that the Ford operator in San Leandro has demonstrated these well over the years and that the Ford dealership is in full support of the operator. He felt that Ford Motor Company is within its right to locate an auto dealership in Morgan Hill.

Council Member Tate inquired as to the importance of the proximity adjacent to other auto dealerships.

Mr. Mengiste responded that the Ford Motor Company has dealerships that operate in both (proximity and non-proximity to other dealerships). He said that it is beneficial if other dealers are within close proximity, but that it is not essential as a deal breaker.

Craig Ahlstrom stated that Ford Motor Company is here to be a good neighbor. He said that he intends to reside in this community, and that he would want the test drive routes to be safe. He said that in San Leandro, employees have to follow a test drive route and that it is enforced. He proposes to use Highway 101 and Condit Road south to Tennant Road and Condit Road west on Dunne and returning to the site as the designated test drive routes. He did not believe that test drives should occur in any residential areas. He stated that he is currently working with City staff in the development of a photometric system/study to determine the effects of the proposed lighting. He noted that city staff has already determined that auto sales will not produce heavy traffic, indicating that autos will be delivered between 9 a.m. and 4 p.m. He anticipates accommodating all employee and customer parking on site.

Council Member Sellers stated that he did not want to see test drives on Condit, north of the dealership or south of Dunne Avenue.

Bruce Tichinin said that in the case that Mr. Absher cites, he may be right that his client may not be able to challenge these in court. He stated that this seems to be inconsistent with what he knows or his sense, in general, of law on the topic. He said that he could not rebut the comments this evening. He stated that he would like the opportunity of a continuance to study the matter. He said that this can be gotten around by residents suing and raising issues. He did not want Mr. Absher to create an impression on the Council that the arguments he is raising cannot be raised in court successfully. He felt that Mr. Absher misunderstood the thrust of his arguments about the variance. He agreed that these are legislative acts. His arguments about variances go to the request for the six exceptions from the city-wide PUD standards. He did not believe that granting these exceptions were a part of the rezoning, but created exceptions from the legislation. To create exceptions from a law that the Council is not amending is not a legislative act but a judicial act. He said that the variance statute and the City's exception ordinance set the standards that the Council has to meet in order to grant exceptions and variances. He said that there is no evidence to support any of the findings before the Council; and, therefore, he did not believe that the Council could grant the exceptions. He noted that the staff report indicates that Mr. Absher was going to point out that one of the things that the Council has to find in order to grant any one of the six exceptions is that it finds that the exceptions are necessary to preserve a substantial property right of the applicant. The staff report states that Mr. Absher was going to address this issue and did not believe that he has done so.

Mr. Tichinin referred to Planning Manager Rowe's power point presentation. He noted that staff indicates that meeting city standards regarding noise will assure that there is no potential for significant noise impact from this project. He did not believe that there were noise mitigation measures proposed for the project. There is nothing showing as to what the existing base line situation is in this area with respect to noise or what the factual impact of this project will be on the noise level in the vicinity. Staff cites that the applicant would be required to comply with the 60 dba standards for residential areas, noting that there is land zoned residential across the street. In taking a look at the City's general plan noise contour map, he did not believe that it corresponds to staff's testimony that the 60 dba standard can be met because it shows a 65 dba level in the noise contour in the Condit Road area. He submitted his June 18 letter and incorporated it in its entirety for the record. He felt that this project violates the noise element of the general plan because the procedure required by the Noise Element for assessing noise impacts of projects has not been followed so as to assure that they do not have the potential to create a significant noise impact on the environment. He read from the policy as listed in pages 104 and 108, section 7b of the City's general plan. He felt that the City should conduct significant factual evaluation such as the preparation of a noise study of the potential noise impact of a project. He said that the Council has received adverse responses to the proposed project. He said that one of the sources of interior noise in this project will be what happens in the repair bays. He felt that there would be a cacophony of noise coming from the repair bays and that there is no consideration of the noise source anywhere in the record in connection with this project. He noted

that the initial study admits that there will be increases in noise levels from the project with the principal source coming from vehicular traffic. He said that General Plan Policy 7c states that noise level increases resulting from traffic associated with new projects shall be considered if the noise level increases 3 dba or greater with a future noise level of 60 dbas or greater. He did not believe that an attempt has been made to find whether it will be the 3 dbas. He referred to Policy 7f that states that noise levels produced by stationary noise sources associated with new projects shall be considered significant if they substantially exceed ambient noise levels. He did not believe that data has been gathered to determine whether or not this policy applies. It was his hope that the Council had an opportunity to read his letter before making a decision. A new issue raised is the issue of the loss of agricultural land both from a cumulative impact stand point and from the loss of the 8 acres involved which are acknowledged as prime farm lands. The failure to treat this results in the project having a significant effect on the environment on these counts as well. He felt that these go to the need of preparing an EIR because the mitigated negative declaration is not supported by the evidence. It was his hope that the Council denies the project as it was his belief that the law requires it and that the community is also requesting its denial. The Council is placing the situation such that this project would be isolated from the auto dealership strategy. He did not believe that the Council can expect the use to produce more than \$100,000 per year in revenue to the City. It will set in motion a loss of quality of life in Morgan Hill where it will be permanent and precedent setting, impossible to reverse. He felt that the detriment will greatly out way the \$100,000 per year in revenue that can be expected. He said that the City's provision does not provide for a basis for the variance to be tied to the characteristics of the property.

City Attorney Leichter indicated that it was the Cruik Case versus the County Santa Clara which states that a variance does not have to be tied to the physical characteristics of the property. She stated that she was trying to understand Mr. Tichinin's argument on the variance and how it fits in the actual text of the PUD ordinance. It was her belief that Mr. Tichinin explained his position on this issue.

Deborah Sparacino stated that she sent e-mails to the City Council addressing her safety concerns. She read a letter from a neighbor, Ron Watson, a police sergeant for 13 years, who requested that she present it to the Council. He understands the need to promote business and the tax dollars they bring as they pay his salary and allow him to provide a service to the community. He agreed with many of the concerns raised by his fellow residents. He states that the Council's decision will affect this community forever and that it cannot underestimate the safety risk of placing one or more dealerships in close proximity to an elementary school and a park. He said that pedestrian traffic associated with these locations presents a greater risk to the community. He felt that test drives are an inherently dangerous proposition. It only takes one catastrophic test drive and it will be remembered for life. He felt that Condit, at Dunne, is not the best location for the Ford dealership. He supports additional auto dealerships in Morgan Hill, at the right location. He felt that it is reasonable to expect sound decisions when it comes to community development and the safety of children. It may not be in the City's best interest to offer Ford greater incentives and that

it may be better to locate them at an anchor store, in a more appropriate location, building the location into a greater tax base.

Karen Bainbridge deferred her time to Michael Lawson.

Michael Lawson requested that everyone look at the reasons that the proposed dealership is wrong for the community. He noted that the proposed dealership would be located near a school, park, the soccer field, the aquatics center and local residences. He felt that test drives are inherently unsafe and that children cross four lanes of Dunne twice a day to go to school at Nordstrom. Children also walk along Murphy and Dunne Avenues on their way to school. The residents have also raised concern about traffic, lighting and chemical pollution. He noted that six exemptions to the PUD are being requested for this dealership and felt that this demonstrates the proposed dealership is in the wrong area. He wrote the Council about the fact that no setback has been required of this applicant to allow Condit to be expanded to four lanes. This lack of setback may force Murphy to be expanded to four lanes instead of Condit. Doing so would jeopardize the public's comments on this matter. He requested that all proposed businesses, including this one, that are to be developed along Condit Road, be mandated to have the required setback to allow Condit to become four lanes instead of Murphy Avenue. He also sent the Council an e-mail regarding the lack of a noise study for the proposed Ford store. He noted that the City's zoning plan shows residential development 66-feet across the street from the proposed Ford store. He did not believe that it would be likely that the limit of 60dba can be met. The lack of a noise study and the lack of required setbacks along Condit Road clearly demonstrates that this application and the site have not been planned properly by the applicant. If the Council agrees with any of the concerns that he has raised, it would have to vote no on the proposal. He did not believe that anyone would doubt the Council's integrity if it votes for the safety and well being of the residents of the community.

Bob Bainbridge indicated that he is a resident of Kelly Park and the president of the homeowners association. He did not believe that the Ford dealership belongs in the PUD development on Condit Road. He said that the Ford dealership will have a direct impact on safety of students attending Nordstrom School as well as the people who play at Nordstrom Park. He displayed pictures of a typical day of cars parked along Murphy Avenue. He said that this is not an area where residents want people to test drive cars. He felt that the Chevrolet dealership across Highway 101 violates noise, lighting, public announcement systems and test drive routes on a regular basis. He expressed concern with the impact of the Ford dealership on the land located across the street that is zoned R-2. He noted that the Chevrolet dealership was incorrectly using the land behind them to store vehicles. He was not sure how the City would be able to enforce the issues associated with the Ford dealership when it cannot even enforce the violations associated with the Chevy dealership. He said that the Ford dealership will make it harder to get the R-2 land developed. He felt that the Council needs to preserve and provide safety for the residents of the community. He requested that the location of the Ford dealership be moved elsewhere.

Bob Burkhardt addressed the urban service area amendment, noting that it added 57 acres, 19 of which were adjacent to the proposed Ford store. He felt that it was a long term City Council strategy to attract car dealerships and create an auto district within the City of Morgan Hill. He indicated that the annexation was approved by LAFCO on June 11. He did not have a fundamental issue in having an auto district in Morgan Hill. However, the Council has picked the most populated intersection of Highway 101 at Dunne Avenue to achieve this plan. He indicated that a majority of the residential community east of Highway 101 must travel the Dunne corridor to reach the Highway. He did not believe that Cochrane or Tennant have the same level of congestion or impact. He noted that the City Council is currently reviewing one Ford dealership in the area. However, in previous meetings, the Council reviewed and discussed auto malls, auto districts and various sites to be planned similar to auto malls found in Los Gatos, San Francisco, Fremont, San Jose, Gilroy, Seaside, and Salinas. He noted that none of these cities have individual dealers by themselves as they are all in auto malls. Even if the Council changed the auto dealership strategy, he felt that it could still be amended later. He felt that it was important to ensure that the public is informed of government plans and that the appropriate evaluations and comprehensive impact reports are completed on the potential impacts of multiple dealerships in this area. He requested that the City prepare a cumulative EIR for the auto dealership in association with the other 18 businesses located in the Condit/Dunne area. He recommended that the Ford decision be postponed until the Council adopts a final auto dealership strategy and that everyone understands whether Condit or Murphy will be a four lane road as this would significantly impact the overall environment of the area.

Mark Spacacino said that his primary objection to the Ford site is that it would be the second auto dealership in the Dunne Avenue area. Approval would almost guarantee a third and fourth auto dealership in the future. He understood that staff presented a traffic trip analysis and that it calculates to approximately 9,000 trips per week per dealership. This results in the addition of 35,000-40,000 trips a year associated with the Ford dealership. He felt that the trip generation information presented appears to be low. He felt that any development would impact traffic. If it is a restaurant, it would be a benefit to the citizens of Morgan Hill. He recommended that development of Dunne Avenue be one that benefits the community. He felt that the Ford store would be a valuable addition to Morgan Hill, but suggested that the Council find another location where the City would have a dedicated auto community which would be in the City's best interest.

Teresa Lawson requested that the Council vote no on the proposed Ford store at the Dunne Avenue/Highway 101 location. She read from a prepared statement, indicating that the proposed Ford store would have far reaching implications for the local community. She stated that this area of Morgan Hill has a large residential population, many of whom moved to Morgan Hill to leave the traffic and congestion of larger cities behind for a rural community. She noted that what the community has in this location is an ever growing presence of fast food restaurants, motels and now a proposed auto dealership or soon to be auto mall. The open field and live oaks that used to dot this area are now a memory being replaced by a growing business district around the corner where she lives. She felt that the Council selected the Dunne/Highway 101 site with the

reasoning that the area already has a parking lot and seas of cars from large businesses. She did not believe that this meant that further destruction of the town's rural integrity at this location is acceptable. She noted that the Council has heard the residents' concerns of light/noise pollution, increased traffic, test drives in the neighborhood that will be next to impossible to enforce. Also, safety issues with an elementary school and a park close by is of concern. She requested that the Council consider relocating the Ford business, as the decision that it makes this evening will have long term effects on the lives of those who reside in Morgan Hill.

Nilou Tarani, Kelley Park resident, stated that it was disturbing to know that her family and her neighbors' quality of life will be dependent on the decision that the Council will be making on the Ford dealership, and consequently, the impact on the decision on Murphy Avenue becoming four lanes. She moved to Morgan Hill last year and stated that had she known that an auto dealership was being proposed, she would not have moved to this location. She shared the concerns of other residents relating to noise and pollution. She noted that Council Member Tate disagreed with the relocation of the Ford dealership, and suggested that the Council revisit the auto mall strategy. Council Member Tate also mentioned a "new awareness." It was her hope that each Council Member is aware of the direct impact associated with the decision it will make on the quality of life for the Murphy/East Dunne Avenue area. Also of concern is the devaluation of property values. She urged the Council to vote no on the Ford dealership.

Mat Fairband felt that great arguments were presented this evening. He stated that he would leave the legal issues to the attorneys. Should the Council vote yes on the Ford store tonight at this location, it would impact the lifestyles. Rather than ending up with an identifiable area of auto dealerships, the City will have a dappling of auto dealerships in the community. He requested that the Council defer its decision on this issue and that the Council put together an auto dealership strategy; identifying locations for dealerships in areas that have lower impacts on residents.

Sunday Minnich, Executive Director of Chamber of Commerce, stated the Chamber's support of the auto dealership at the Dunne location. She noted that the land has been zoned commercial for over 30-years. If an auto dealership does not locate on the site, another commercial use would go in, perhaps with greater impacts. If the auto dealership goes to Cochrane or Tennant, those residents will be in this room. She felt that the Highway 101/Dunne location is a great location for an auto dealership as it has great visibility. She felt that Morgan Hill needs to look at the future, indicating that the future shows that the City needs to increase its sales tax revenue to support fire, police and emergency services and the quality of life. She stated that sales taxes pay for the great quality of life. The only other alternative would be to increase property taxes, resulting in citizens being in this room again. She said that the Council understands that it will need to raise sales tax or raise property taxes. By allowing the dealership to locate at Dunne/Highway 101, it will not only bring in sales taxes from the new dealership but will enhance the tax revenue that we already receive from the Chevrolet dealership by locating them in proximity to each other. She said that the residents near the Chevrolet dealership expressed similar concerns as are being expressed by the residents this evening. The residents were given assurances six years ago when

the Chevrolet dealership moved into Morgan Hill. She said that these assurances have been kept, as the Chevrolet dealership has not received a complaint since moving into their location. She indicated that auto dealerships are great supporters of the community and give back in other ways as well. She felt that the Council made careful concessions to make sure that the concerns of the residents were addressed with the Chevrolet dealership; and that it was her belief the Council will make the same concessions at the Highway 101/Dunne site. She felt that many individuals moved to Morgan Hill for its quality of life, and that the quality of life can be attributed to the Council's ability to make the right decisions.

Marby Lee found it ironic that the Council was so concerned about a gateway to Morgan Hill that it nearly turned away an In and Out Burgers but somehow finds a Ford dealership more appealing. She also found it ironic that the Council has addressed a possible child molester coming into town with the issue of safety of children, and yet are willing to place a use that is dangerous not less than a mile from an elementary school and park. She said that it is already difficult for people to get in and out of existing businesses. She felt that traffic would be impacted by the auto dealership. She said that it was brought up that the Council had decided on an auto dealership strategy 1.5 years ago. It has been raised that if the Ford dealership is not be allowed in the PUD, a use with a higher traffic flow would go in. She recommended that the land be left open, as it was her belief that things have changed and that the area needs to be reevaluated because of the traffic and for the reasons already stated. She urged the Council to vote no on this issue.

Sharon Miller, 1205 Kelly Park Circle, noted that the traffic is backed up on Condit up to the overpass trying to turn left on Condit. What will occur is that individuals will go down to Murphy and make u-turns. Traffic cannot access the fast food restaurants because the area roads are congested. She did not understand why Murphy would be widened to four lanes if there are to be no test drives on Murphy. She felt that it should be Condit Road that is widened to four lanes. She stated that she was disappointed with the comments made toward Council Member Chang, and requested that an apology be extended to her this evening.

Tom Timmermen stated that he moved to Morgan Hill a couple of years ago as it is a wonderful community of people in a residential neighborhood with stores that support the general atmosphere of Morgan Hill. He does not see the dealership being for the residents as much as it is to attract people off the corridor heading north to San Jose or south to Gilroy. He hopes that the Council will invest its time and effort in this area and take action that will benefit the residents of Morgan Hill.

No further comments being offered, the public hearing was closed.

Mayor Kennedy said that what he heard Mayor Pro Tempore Chang state was the Council approving a policy that would support 300-400 acres of land for auto dealerships.

Mayor Pro Tempore Chang recollected that she stated that the policy would support 30-40 acres of land for an auto dealership.

Mayor Kennedy stated that he met with some of the neighbors as well as Officer Watson. Contrary to the comment made earlier, he said that he takes pride in listening to the community. However, it does not always means that he agrees with everyone. He said that he is very conscience about the safety and well being of the community residents, especially the children. He said that this is a difficult decision and that he has to look at what is best for the entire community. He stated that some of the most important services the City has to offer are police protection and fire service. He indicated that he was Mayor of the City when it had to lay off 1/3 of the fire department and almost ½ of the police department. He vowed at that time that he would not go through that again. He learned that the City needs economic growth and development to have a healthy community. If the City continues to turn away businesses, the City will develop a reputation for being opposed to businesses and being business unfriendly. Years ago, the City had this reputation and that he has worked hard for many years to restore the good name of Morgan Hill. The City is open for business and values good businesses coming into the community. With respect to this specific project, as he looks at the issues that have been raised relating to lighting, noise and traffic safety, he does not see these issues that have been raised. To assume that Murphy Avenue will become an arterial is a false assumption, as there is no connection between this specific approval and the study that relates to traffic on Murphy Avenue. He indicated that the Council will hold a joint public workshop with the Planning Commission to talk about the traffic study for Murphy. He said that he has opposed widening Murphy Avenue as a main arterial, and that he does not support Murphy becoming a north/south arterial. He stated that the worst noise coming from this area is coming from the freeway, and that this project will build a barrier that will affectively reduce freeway noise from the neighborhood. The city has commitments with respect to lighting control and the photometric study and routing of the traffic for test drives. The Ford dealership will require their employees to sign agreements with respect to where they will be allowed to drive. He stated his support of this proposal because it was his belief that it would benefit the entire community. He indicated that he resides off East Dunne Avenue, travels this road a daily basis and knows what the traffic is like.

Council Member Sellers indicated that the Council has tremendous respect for each other. He probably jumped to conclusions at the last meeting because he felt that he was being questioned as to his truthfulness and his feelings on an issue that is very controversial. He said that Mayor Pro Tempore Chang has been on the Council much longer than he has. Therefore she knows the issues and that he has respect for her. He felt that the Council was wrong to question each other's veracity. He said that individuals have indicated that Mayor Pro Tempore Chang owns property on Tennant or Condit and that this might influence her decision. He found these kinds of comments to be offensive. He said that he has far too much respect for her as an individual to think that she is doing anything other than what she feels is right. He also has a lot of respect for the other Council Members.

Council Member Sellers felt that each Council Member is a neighborhood advocate. He wanted to make sure that all of the neighborhood issues and concerns were addressed noting the following: 1) the City will be conducting its own independent lighting analysis. If the user does not comply with the recommendations, they will not be allowed to operate. 2) the City needs to identify a minimum height for plants on the freeway and Condit sides. They need to be high for visual impact and to help with the other issues (e.g., reduce noise levels from the freeway. 3) Limit the flag pole height to 30 feet. He felt that the nation's emblem needs to be held high and not be allowed to be used as garish sales tool. 4) He could not see that the test drives could be conducted on Murphy or anywhere near residential areas. It is not allowed for insurance purposes, and the sales persons will not be allowed to use Murphy or residential streets. If an issue comes up, and residents cannot get satisfaction from the Police Department, he requested that the residents contact him or any other council members and that the concern would be investigated. 5) Prohibiting test drives south of Dunne on Condit Road or north of the dealership. 6) He noted that part of the project that is being overlooked is that there is a remaining pad for a restaurant. He said that 90% of the businesses will not locate in Morgan Hill for the very reason that everyone talks about, this is a small town. He said that he would do everything that he could to help identify appropriate businesses for the PUD.

Council Member Sellers noted that the property has been zoned commercial for several years and that it will develop in the next few years. He felt that it made sense to place the lowest possible traffic use in the PUD. He stated that he resides across the street from an auto repair shop, indicating that he does not hear the use in the neighborhood. He said that this Council is making a strong statement by limiting the number of auto dealerships in this area and by not allowing land to be annexed for this purpose. The Council cannot legally tie the hands of future Councils. However, this Council can state that it feels strongly that this is the right way to go. Therefore, any future Council members have to be diligent to make sure that it does not change again. He stated that he does not support making Murphy Avenue an arterial, and that a study has been undertaken in an attempt to address the concerns of the neighborhood. If the concerns are met, he recommended that the Council support the zoning amendment. If the concerns are not met, he would not support the application. He felt that the City has set high standards for this use.

Council Member Tate indicated that he viewed the video from last week. He found two things that struck him this evening. The first is a deep concern on the part of the neighbors of the operation that is going in the PUD and its safety. The second thing that struck him was that the only statistic or fact that came up is one antidotal example from a police officer of a death that occurred. He did not hear one single statistic about the safety of auto dealerships. He was trying to rationalize the safety concern expressed, but the facts have not been presented to substantiate the concerns, with the exception of the one antidotal example. He stated that he has supported the Council's auto dealership strategy, including the annexation of the property to the north which he felt was going to give the City the proximity of a couple of dealerships in the area. He noted that the strategy was changed this evening, a concern to him about piece mealism. He was not sure whether the Ford dealership was still interested in locating on Condit with a proposed auto dealership strategy or whether they want to wait to see what the strategy turns out to be. He

understood that there were a lot of issues raised at the previous meeting about the viability of two Ford dealerships. He noted that the Ford dealership still wants to locate within the PUD and that the other Ford dealership is fighting it. He felt that competition is healthy. He felt that Morgan Hill could win the competitive battle. He stated his support of Ford locating in the PUD. He said that he has not been convinced by the argument of safety, even though the neighbors believe that a traffic safety concern exists. He would like to study the concern about noise a little more, as it is a concern. He felt that the Council has addressed the lighting issue. He inquired whether the Council should discuss the auto dealership strategy before finalizing this decision, and whether the City could partner with Ford on what can be done with the strategy.

Council Member Carr inquired how noise would be evaluated and how is it determined whether it was insignificant enough.

Planning Manager Rowe noted that Highway 101 is behind the Ford dealership and is a single noise generator in the community. He indicated that the ambient noise conditions were looked at as part of the General Plan update. The General Plan's noise contour map looked at future conditions such as increased traffic volumes on Highway 101 and other noise sources. He said that the General Plan update looked at the freeway, noting that a noise analysis was performed as part of this update, and that the policies that were placed in the General plan were in response to how the City would mitigate impacts from the noise sources in conjunction with future development of the area. The argument that staff put forth in terms of the performance standards having 60 decibels at the property line refers to the use itself. In order to achieve the reduction from the noise contour maps referred to by Mr. Tichinin would require that this dealership mitigate the freeway noise. He felt that it would be excessive to require this use to install some type of noise attenuation to bring the background noise conditions to a level that would meet the standards referred to. It was staff's belief that the performance standards contained in the codes are sufficient to mitigate noise, given the ambient conditions that exist and with the major noise being generated from the freeway. He noted that the background conditions will not be exceeded. Staff believes that adherence to performance standards will be sufficient to find that the noise impacts would be less than significant. With respect to the future residential development that will occur to the east, the background noise conditions will have to be assessed and there will be noise mitigations that will be incorporated into this development such as sound walls or other noise attenuation measures to ensure that the rear yard environment and the interior environment of the future dwellings are in accordance with the City's adopted general plan standards.

Council Member Sellers inquired which landscape screen height would be appropriate based on the type of landscape material to be planted, and to be consistent with what was required for other similar facilities.

Planning Manager Rowe responded that staff looked at plantings as a way to provide a visual screening of parking areas and that landscaping is typically three feet in height. He stated that the PUD guidelines could include a three foot minimum height landscaping requirement, including the comment on the flag pole height and the test drives.

Mayor Kennedy inquired whether there will be any vegetation buffering the vehicle parking area and the sidewalk for noise attenuation to be included.

Planning Manager Rowe said that the Council is only dealing with the zoning amendment application this evening as opposed to the details of the site development. He indicated that the Council can request that the Architectural Review Board (ARB), when evaluating the landscape plan or the physical treatment of the 30 foot areas, take into account the concerns raised about noise impact. He informed the Council that the City has required projects within the 30 foot area to install berming in lieu of shrub planting. He felt that the combination of the landscaping and the berm are affective ways to mitigate noise issues as well as providing for the visual screening that is desired.

Mayor Kennedy requested that the ARB evaluate the landscape plan should the zoning application move forward.

Council Member Carr requested that staff address the setback on Condit Road issue that was raised.

Mayor Kennedy said that he spoke with Mr. Lawson, and the comment was that Condit could be expanded to four lanes. This would require a greater setback to the east side of the street. Because of the way the layout is set up, the setback is not as far to the west.

Mayor Pro Tempore Chang said that for two years she held her position on the use. She stated that she did not believe that this was a good location for an auto dealership. She said that she would not support the use this evening or in the future. She said that this has been a difficult process, and that there may have been some misunderstandings. She clarified that she has not developed land, nor helped others develop; and that she does not own a piece of land in Morgan Hill or anywhere else. If the City does not have a proper auto dealership strategy, siting the auto dealerships in the right place and designed/planned properly, the City will be getting an auto dealership at the expense of the City's rural atmosphere. It was her belief that relocating the Ford dealership will still result in receiving revenue, but that it would take time to do so.

Action: *Mayor Pro Tempore Chang made a motion to **deny** the Ford dealership application. The motion died for the lack of a second.*

Council Member Tate said that when the Council developed the strategy, he was of the opinion that auto malls were out of the picture, and that none of the auto dealers would be going into a mall situation. It was his belief that the Council only wanted individual dealerships.

Council Member Sellers said that he read in a summation page that he commented that he wanted an auto district strategy. He reviewed the notes and noted that he stated auto dealer. He noted that the term mall, district and dealers are used interchangeably. He did not believe that the

Council wants to see a mall or large auto district. He does not want to be Los Gatos, as they have too many auto dealers. He felt that the Council has gotten more unified in feeling that this is in fact the case.

Council Member Carr commended everyone for talking about the issues this evening. He noted that the Council represents approximately 35,000 citizens in Morgan Hill and that they live in neighborhoods throughout the community. He stated that the Council is being asked to approve six exemptions to city-wide PUD standards this evening. The Council has heard the pro and con arguments about whether they are acceptable exceptions to the city-wide standards. He felt that all exceptions make sense and that there is precedent to each one of the exceptions. He appreciated hearing from the individuals who will be impacted by the tough decisions, noting that mitigation measures will be included to address the concerns raised this evening. It is his job to consider all issues and concerns and ways to mitigate concerns as a council member. If the concerns cannot be mitigated, the project should be denied. He felt that staff and the applicants have put together realistic plans to mitigate concerns. By approving this project, the Council will be approving a use that will have significantly less impact on traffic than the other approved uses for this property. He stated that he test drove a car in Gilroy last weekend and that he was directed toward prescribed routes. The Council heard concerns about violations at the Chevrolet dealership, noting that the City has not received complaints or concerns about the dealership. If there are complaints or concerns, the City needs to do something about the violations. He was pleased to see the Ford representatives in attendance this evening, as he was disappointed that they were not present two weeks ago. He wanted to make sure that all employee and customer parking is to be contained on site, as he did not want to see cars parked along Condit Road. He felt that the suggestions regarding landscaping should be incorporated as recommended by Council Member Sellers. He agreed with the other comments made about the Murphy Corridor Study and how they are separate issues. He noted that the General Plan and the Murphy Corridor are 20 years out, and that it would take time to build out the area. He noted that residents were imploring the Council to change its mind. He said that he has not stated his position on this issue because he wanted to hear comments and have questions answered. For anyone to believe that Council members have already made up their minds was a wrong assumption. It was his hope that the residents believe that they have a voice in the process, and that they contacted Council members for this reason.

Council Member Tate inquired whether the application should be postponed in order to review the auto dealership strategy before finalizing the PUD in terms of making sure that it does not piecemeal the entire PUD.

Council Member Carr felt that there was merit to continuing the application and revisiting the auto dealership strategy. He said that he previously indicated that he would be willing to consider a dealership in this area, and that he did not want to see an auto row along Condit Road. The Council heard from auto dealers that they do not need to have a great massing of dealerships on large acres/spaces, and that this was not something that the Council was interested in. He said that he would not dismiss revisiting the strategy.

Council Member Sellers stated that should the City not proceed with this auto dealership, the City may end up with a use that would generate a higher volume of traffic in the area. He felt that it made sense to proceed with this application regardless of what the Council does with the bulk of the strategy.

Mayor Pro Tempore Chang felt that an appropriate location for the Ford dealership would be south of Tennant Avenue as this area has not fully developed as residential. The Tennant PUD is a large piece of property that can be planned, noting that a freeway access exists. She did not believe that placing the Ford dealership on Condit was good planning. Another good location is the property north of Cochrane Road. She stated that she would support postponing a decision on the zoning amendment and restudy of the auto dealership strategy.

Mayor Kennedy said that the Council adopted an auto dealership strategy in February 2002. The Council subsequently changed the strategy by various actions taken by the Council. The Council came up with a strategy that stipulates 3-4 auto dealerships and threw out the concept of an auto district and auto mall, although the strategy was not changed to reflect these discussions. Although the strategy may not address where the Council is today, he felt that the actions of the Council do indicate what its policy is. It was just a matter of taking those specific discussion/action that the Council has made and incorporating them into a strategy. He felt that it was a matter of changing the wording to reflect the actions that have previously been made.

Mayor Pro Tempore Chang felt that some of the Council members may have different view points of what the auto dealership strategy should be since the 19 acres have been removed from the strategy.

Council Member Sellers said that the Council has spent two years going over the auto dealership strategy and refining it. A consultant was retained and the Council reviewed all options, including Cochrane and Tennant Avenue, and concluded that the Condit site was the best site for a dealership. These two years of work still state that the auto dealership is appropriate in this PUD. The question is where the remaining 2-3 auto dealers might locate. He did not see that modification to the strategy would impact the decision on this application.

Council Member Carr agreed that the Council took a lot of time studying the strategy; and that it was the conclusion of the Council that it would only approve one dealership at this time, and that it was to be located at the Dunne/Highway 101 area. He has not decided whether Morgan Hill needs another auto dealership.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1621, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1621, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE HORIZON LAND PUD AND ESTABLISHMENT OF A PRECISE DEVELOPMENT PLAN FOR THE NORTHERN 8.65 ACRES TO INCLUDE A 30,027-SF FORD DEALERSHIP AND TWO COMMERCIAL BUILDING PADS. (APN 728-17-019; ZAA-98-16: CONDIT – HORIZON LAND (THE FORD STORE), Amending Exhibit A, the PUD Guidelines as follows: 1) item 35 the landscaping section to include a minimum shrub height of three feet; 2) the addition of 50a, requiring landscaping and berming within the 30 foot Condit Road frontage to be designed so as to mitigate noise to be generated on site; 3) add under the “Parking and Loading Circulation” section 63a that stipulates all employee and customer parking shall be provided on site; 4) further amend the test driving requirement on 72a to stipulate that the test drive to exclude Condit Road north of Main and south of Dunne Avenue; and 5) under the general provision section, add 86 to stipulate that any flag poles installed on site shall not exceed a height of 30 feet by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: Chang; ABSTAIN: None; ABSENT: None.***

Council Member Tate stated that he was undetermined on his vote until the time he made it. He said that the discussion of his colleagues was helpful. He stated his support of the Ford dealership, but that he was not sure whether this is the right location. However, if they want to locate on Condit Road, the City will work with them.

Mayor Pro Tempore Chang excused herself from the dias.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, agreed to extend the meeting beyond the 11 p.m. curfew.*

City Manager Tewes felt that it would be appropriate for the Council to consider items 19, 20 and 21 this evening. These items relate to the recommended budget and implementation of financing strategies necessary to implement the budget. He said that item 22 is the proposal for a renovation of a piece of property in the downtown. It was his belief that the property owner is anxious to move forward with this project. Item 23 relates to a policy matter that could be postponed to a later time. Item 25 is the discussion of a policy guidance about the sequencing of development. He said that item 26 is a straight forward item.

Action: *It was the consensus of the City Council to consider agenda item 22 at this time.*

Mayor Pro Tempore/Vice-chair Chang excused herself from the remainder of the meeting.

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

22. RENOVATION OF THE ISAACSON GRANARY – Resolution Nos. 6583 and MHRA - 244

Director of Business Assistance and Housing Services Toy presented the staff report. He identified one last minute revision requested by the seller. The seller is requesting that section 9 of the purchase agreement be deleted as it was not originally agreed to by the seller or the developer. To address this issue, he handed out a redline revision to the purchase and development agreements. Staff will agree to delete section 9 in these documents and add them back into the DDA as a requirement for the developer. The clause stipulates that the developer would be responsible for any third party claims against the Agency that existed prior to the closing of escrow.

Mayor/Chairman Kennedy opened the public hearing.

Brad Jones felt that this development was very important to the downtown, as it has been a long time since a new project has gotten started. He noted that one of the main reasons for having a Redevelopment Agency was to remove blight from an area. He felt that the building is a classic poster child for blight. The removal of the blight would not take place without a lot of help from the Agency Board. He said that retail/office space is needed in the downtown, and that this project will provide some space for retail businesses to locate. He requested the Council/Agency support the request.

Leslie Miles thanked the Council for considering this loan. She indicated that this has been a four year process, and that the project is an exciting one that would involve a lot of partners (e.g., Day Worker Center, the Catholic Church, City of Morgan Hill and a local bank). She looks forward to having a successful LEED certified project and the Council's support of this project.

No further comments being offered, the public hearing was closed.

Council/Agency Member Sellers commended everyone for the work/creativity done on this project and stated his support of this unique project.

Council/Agency Member Tate stated that he was not in support of this direction in terms of economic development. However, he noted that the Council/Agency is supporting it, and that he

would also support it as the loan has been put together correctly. He would get behind the strategy and recommended that the project be done right.

Council/Agency Member Carr said that he was not in favor of this dollar amount. As the Council has approved the dollar amount, the Council will be approving how the dollar amount will be used. He felt that it has been stated that the Council/Agency is using the dollar amount in an appropriate manner. Therefore, he supports what is being requested this evening.

Action: *On a motion by Council Member Sellers and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5683, Making Findings and Authorizing the Executive Director to Do Everything Necessary to Execute and Implement the Disposition and Development Agreement and Related Documents, Including Making any Minor Modifications to the Agreements and Executing the Purchase Agreement for Isaacson Granary, as amended by staff.*

Action: *On a motion by Agency Member Sellers and seconded by Chairman Kennedy, the Agency Board, on a 4-0 vote with Vice-chair Chang absent, **Adopted** Resolution No. MHRA-244, Making Findings and Authorizing the Executive Director to Do Everything Necessary to Execute and Implement the Disposition and Development Agreement and Related Documents, Including Making any Minor Modifications to the Agreements and Executing the Purchase Agreement for Isaacson Granary, as amended by staff.*

OTHER BUSINESS:

23. UTILITY UNDERGROUNDING FOR THE ISAACSON GRANARY

Action: *On a motion by Council/Agency Member Carr and seconded by Council/Agency Member Sellers, the Council/Agency, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Chang absent, **Directed** Staff to Work with the Council Economic Development Subcommittee to Develop a Program to Assist Developments with Either the Payment of Utility Undergrounding In-lieu Fees and/or the Installation of the Utility Undergrounding.*

City Council Action

25. DISCUSSION OF PHASING FOR COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD)

Mayor Kennedy inquired whether the applicant would have any objections to continuing this item.

John Telfer indicated that he would not object to a June 25, 2003 continuance.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Continued** this item to June 25, 2003.*

19. ADJUSTMENT TO GENERAL PLAN MAINTENANCE FEE – *Resolution No. 5684*

Finance Director Dilles presented the staff report and indicated that staff has determined that it was appropriate to increase the fee to 5%. This would still maintain the perspective of recovering half the cost. Staff has determined that in reality it would take a 10% fee to generate the entire cost, following the past approach and previous Council policy as codified in a City Council policy. He read the policy into the record as follows: “The City Council recognizes the need to maintain a general plan which reflects community goals and values and is consistent with State requirements. The Council further recognizes that both the development community and city residents benefit from the current up to date general plan. As such, it is the policy of the City Council that both the development community and citizens should share in the cost of maintaining that document. A 3% surcharge on all applications filed with the Planning and Building divisions shall be instituted, thereby generating approximately half the cost necessary for general plan maintenance.” He said that it is staff’s recommendation that the Council adopt the resolution and that the Council direct staff to return to the City Council with changes in the development processing fee City Council policies to reflect the 5% surcharge.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5684.*

20. DEVELOPMENT IMPACT FEE ADJUSTMENTS – *Ordinance No. 1624, New Series and Resolution 5686*

Director of Finance Dilles presented the staff report. He stated that he has a second alternative to discuss with the Council, indicating that it is not the recommended or noticed fee schedule. Should the Council decide to go in this second direction, staff would need to return to the Council with new documents.

Council Member Tate and Mayor Kennedy indicated that they were comfortable with proceeding with the first alternative as this addresses basic public safety.

Council Member Carr indicated that it would seem that fees for the sports complex and park and recreation would be for capital costs and not operating costs. He expressed concern about this

because the Council has expressed an interest in sitting down and looking at the RDA funding again. He noted that the Council has accepted the Parks & Recreation Commission recommendation to take the \$2.7 million out of park acquisition fund and apply it toward the sports field so that the sports field monies can go to the aquatics center. Before stating that the City will be raising a fee to recuperate these costs, he felt that the Council needs to sit down and examine whether this is the way to go or determine whether there were other options. It was his belief that the Council/Agency has agreed to review the RDA funding allocation. He felt that this action may need to be the conclusion of the review session, and felt that the Council/Agency has to have this conversation.

City Manager Tewes indicated that this recommendation is consistent with the recommendation that came to the Council from the Parks and Recreation Commission, which would provide funds from the park development fund and to replace these funds with a new fee. He stated that the Council endorsed this recommendation and that, with proper notice, staff is bringing forth the recommendation.

Council Member Carr said that he would like the Council/Agency to have the discussion of whether the new fee was appropriate or whether it is time to have a conversation about extending the RDA to generate more dollars out of the RDA in order to complete projects.

Council Member Tate indicated that the Council/Agency committed the sports field as part of this idea.

Council Member Sellers stated that these are capital project dollars either way; indicating that this is a specific designation, as opposed to the general use of the RDA. He stated that he likes the fact that the recommendation is specifically identified as a specific use. He agreed that the Council/Agency needs to have this conversation. He felt that it was important to discuss the long term operational funding.

Mayor Kennedy felt that it was time to discuss the extension of the RDA. However, he did not believe that this should preclude taking action on this item. He recommended that the Council proceed with the action and then start the process of talking about the whole new visioning process. He felt that this would be a long process to make sure that it is done right, as it would require buy in from the community and take several years to be put into place.

Council Member Tate supported relooking at the strategy but felt that the City needs to make itself whole as it moves along. Unless the City replaces this funding, the City has not made itself whole on the current RDA strategy.

Council Member Carr said that in reality, the City is not whole. Even if the City was able to replace \$2.7 million, it would not be enough funding to complete everything the City wants to do.

Council Member Sellers stated that he was not convinced that the \$2.7 million was a drop in the bucket. He felt that there were a lot of options that have not been explored. He said that there are opportunities for private partnerships that have not been discussed to date, and should be discussed at the appropriate time.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Waived** the Reading in Full of Ordinance No. 1624, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1624, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 3.56.050 of CHAPTER 3.56 (Development Impact Mitigation Fees) of TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT IMPACT MITIGATION FEES** by the following roll call vote: **AYES:** Carr, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** Chang.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5686.*

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

21. PUBLIC HEARING FOR ADOPTION OF FISCAL YEAR 2003-2004 BUDGET – Resolution Nos. 5685 and MHRA-245

City Manager/Executive Director Tewes presented the staff report.

Mayor Kennedy opened the public hearing.

City Treasurer Roorda felt that there is work ahead, and that this budget produces a good base line to work from. He said that there are a lot of uncertainties that will come up in the next few months. It was his hope that there would be some resolution at the state level, and that the City may be revisiting the base-line depending on State budget implications. He stated that he was looking forward to the expertise of the City Manager and his staff as they work through the five year plan. It was his belief that the objectives were to maintain, and possibly enhance, the level of

service with possible lower revenue sources, lower expenditures and seeing some productivity improvement on the part of the City. He complemented staff on the process and getting to the base line in an efficient and effective fashion, as it is a complex process.

No further comments being offered, the public hearing was closed.

Mayor/Chairman Kennedy complimented and congratulated the finance staff and City Manager on the process and for putting the budget together.

Council/Agency Member Sellers thanked City Treasurer Roorda for his oversight of the City's finances. He thanked staff for the budget and for the five-year plan.

Council/Agency Member Carr felt that this was a responsible budget and thanked everyone for their input into it. He thanked City Treasurer Roorda for his participation as it has been helpful to have him as part of the team as the City works through the City's finances. He offered one small amendment to the budget. The amendment would be to allocate from the 20% RDA Housing Set aside \$35,000 to the Housing Trust of Santa Clara County. He indicated that the Housing Trust is trying to raise additional money that would leverage dollar for dollar monies from the State Housing Bond. He felt that the best leverage the City has received for its dollars has been from investments from the Housing Trust.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Adopted** Resolution No. 5685 Adopting the Fiscal Year 2003-2004 Annual City Budget and Adopting Appropriations Limit for Fiscal Year 2003-2004.*

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Vice-chair Chang absent, **Adopted** Resolution No. MHRA-245 Adopting Redevelopment Agency Fiscal Year 2003-2004 Annual Agency Budget, as amended (allocate 20% RDA Housing set aside of \$35,000 for the Housing Trust of Santa Clara County).*

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Carr, the Council/Agency Board, on a 4-0 vote with Mayor Pro Tempore/Vice-chair Chang absent, **Approved** the Capital Improvement Plan.*

City Council Action

26. **RESIGNATION OF A PARKS AND RECREATION COMMISSIONER - REQUEST TO FILL VACANCY ON THE PARKS AND RECREATION COMMISSION**

Mayor Kennedy indicated that Wes Rolley has asked to resign from the Parks and Recreation Commission. He stated that when the Council interviewed candidates to fill expired terms on the Parks and Recreation Commission, Don Jensen was next in line in the Council's ranking in the process of being appointed. Rather than going through a whole new process of interviews, he recommended that Don Jensen be appointed to replace Wes Rolley.

Council Member Sellers felt that Mr. Jensen would be capable of jumping right into the Commission as he knows the City very well.

Council Member Tate stated that he was impressed by all the candidates and that he would be happy with any of the candidates as replacement. However, if Mr. Jensen was next in line, it would be appropriate to appoint him.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Accepted** Wes Rolley's Notice of Resignation from the Parks and Recreation Commission.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Mayor Pro Tempore Chang absent, **Confirmed** the Mayor's Appointment to the Fill Vacancy on the Parks and Recreation Commission, Term Ending April 1, 2004.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

- Discussion of the Commission appointment process (Council Member Tate)

RECONVENE TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 12:13 a.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 12:23 a.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:24 a.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY